



**Board of Adjustment / Appeals Agenda**  
**Civic Center 2 Park Drive South, Great Falls, MT**  
**Commission Chambers, Civic Center**  
**January 06, 2022**  
**3:00 PM**

**UPDATES CONCERNING PROCESS OF MEETINGS**

In order to honor the Right of Participation and the Right to Know (Article II, Sections 8 and 9 of the Montana Constitution), the City of Great Falls and Board of Adjustments/Appeals are making every effort to meet the requirements of open meeting laws:

- The agenda packet material is available on the City's website: <https://greatfallsmt.net/meetings>. The Public may view and listen to the meeting on government access channel City-190, cable channel 190; or online at <https://greatfallsmt.net/livestream>.
- Public participation is welcome in the following ways:
  - Attend in person. Please refrain from attending in person if you are not feeling well.
  - Provide public comments via email. Comments may be sent via email before 12:00 PM on Tuesday, January 6, 2022, to: [jnygard@greatfallsmt.net](mailto:jnygard@greatfallsmt.net). Include the agenda item or agenda item number in the subject line, and include the name of the commenter and either an address or whether the commenter is a city resident. Written communication received by that time will be shared with the City Commission and appropriate City staff for consideration during the agenda item and before final vote on the matter; and, will be so noted in the official record of the meeting.
  - Call-in. The public may call in during specific public comment periods at 406-761-4786. All callers will be in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be restricted to customary time limits. We ask for your patience in the event there are technical difficulties

**OPEN MEETING**

1. Call to Order - 3:00 P.M.
2. Roll Call - Board Introductions

**Joe McMillen - Chair**

**Krista Smith - Vice Chair**

**Antoinette Collins**

**Aspen Northerner**

**Christian Stone**

3. Recognition of Staff
4. Approval of Meeting Minutes - August 5, 2021

**CONFLICT DISCLOSURE/EX PARTE COMMUNICATIONS**

## **BOARD ACTIONS REQUIRING PUBLIC HEARING**

## **BOARD ACTIONS NOT REQUIRING PUBLIC HEARING**

5. Election of Chair and Vice Chair for 2022

## **COMMUNICATIONS**

6. Coming Up - Variance Request to waive the distance requirements between casinos and churches at 1819 3rd Street North West.

## **PUBLIC COMMENT**

*Public Comment on any matter and that is within the jurisdiction of the Board of Adjustment/Appeals. Please keep your remarks to a maximum of five (5) minutes. Speak into the microphone, and state your name and address for the record.*

## **ADJOURNMENT**

*(Please exit the chambers as quickly as possible. Chamber doors will be closed 5 minutes after adjournment of the meeting.)*

*Assistive listening devices are available for the hard of hearing, please arrive a few minutes early for set up, or contact the City Clerk's Office in advance at 455-8451. Wi-Fi is available during the meetings for viewing of the online meeting documents.*

*Board of Adjustment/Appeals meetings are televised on cable channel 190 and streamed live at <https://greatfallsmt.net>. Meetings are re-aired on cable channel 190 the following Friday morning at 10 a.m.*

**MINUTES OF THE MEETING**  
OF THE  
**GREAT FALLS BOARD OF ADJUSTMENT/APPEALS**  
August 5, 2021

**CALL TO ORDER**

The meeting of the Great Falls Board of Adjustment/Appeals was called to order by Chair Joe McMillen at 3:01 p.m.

**ROLL CALL & ATTENDANCE**

Great Falls Board of Adjustment/Appeals members present:

Mr. Joe McMillen, Chair  
Ms. Krista Smith, Vice Chair  
Ms. Aspen Northerner  
Mr. Jule Stuver

Great Falls Board of Adjustment/Appeals members absent:

Ms. Christian Stone

Planning Staff members present:

Mr. Craig Raymond, Director Planning and Community Development  
Mr. Thomas Micuda, Deputy Director Planning & Community Development  
Ms. Jamie Nygard, Sr. Admin Assistant

Others present:

Mr. Jeff Hindoien, Deputy City Attorney  
Ms. Debbie Kimball, Public Works Program Specialist  
Mr. Jesse Patton, Interim City Engineer  
Mr. Paul Skubinna, Director Public Works  
Mr. Jim Zadick, Attorney representing the Board of Adjustment/Appeals

Mr. Raymond affirmed a quorum of the Board was present.

**MINUTES**

Chair McMillen asked if there was a motion to approve the meeting minutes as stated for January 28, 2021. Mr. Stuver moved to approve the minutes, seconded by Ms. Smith. All in favor, the minutes were approved.

## **CONFLICT DISCLOSURE/EX PARTE COMMUNICATIONS**

None.

## **BOARD ACTIONS REQUIRING PUBLIC HEARING**

### **1020 Valley View Drive – Appealing the City’s Determination and Denial of the Application for an Encroachment Permit**

Mr. Patton presented to the Board and gave some background of the Appeal. He stated that the City received a complaint of a new fence in the right-of-way at the subject address. On June 18, 2020, the City sent the property owners, John and Brenda Mizelle, a letter notifying them that the fence was in the right-of-way and would need to be moved outside of the right-of-way. On July 20, 2020, the property owner submitted a Boulevard Encroachment application. On August 13, 2020, the City sent the property owner a letter denying the application. On August 27, 2020, the property owner submitted an appeal. Mr. Patton stated that the issue has also been presented to Neighborhood Council 3, which doesn’t have jurisdiction over the determination, but they did provide a letter that is included in the Agenda Packet. The letter states that they thought the City had acted in accordance with the code to deny the application. Mr. Patton stated that the Board would be hearing about other properties within the City that have right-of-way encroachments and are not within code, but that there is limited staff in Engineering and most city departments, so there is a complaint driven response system in place to address encroachments.

Mr. Patton presented a photo of the ornamental fence installed next to the sidewalk within the right-of-way. He also read the Official City Code of the City of Great Falls (OCCGF) 12.1.050.H - “Any permits issued for fencing part of the boulevard area shall ensure that no fence is installed within two feet of any sidewalk, and if a sidewalk does not exist, the Public Works Director or designee shall determine the location of the fence.”

Mr. Patton presented the Staff’s Basis of Decision for denial of the applicant’s appeal.

1. If property owners are allowed to construct fences within the right-of-way, these fences create obstacles making it difficult to access the boulevard area for both city workers and companies installing dry utilities.
2. The property owner has a legitimate option to install the fence in a complying location.
3. The spirit of the Title would not be observed and would be inconsistent with the policy of the City by allowing a fence next to the sidewalk within the right-of-way.

Mr. Patton stated that the applicant’s appeal references a variance request to allow lights that were installed on top of the fence. Because the applicant’s appeal is relates to a right-of-way encroachment regulated by Title 12 of the City code and not Title 17, there is variance that can be requested.

## **PETITIONER’S PRESENTATION**

John Mizelle, 1020 Valley View Drive, owner of the subject property, presented to the Board. He handed the board members additional photos for reference and a signed petition of support from

neighbors. He explained that they bought the property a year before they built the fence. They drove around Great Falls and saw several different houses that had fences up to the sidewalk, so they thought that it was acceptable to the city when they put their fence up. He stated that if it was not enforced, why have the Ordinance. He stated that Title 17 does state that the City should encourage aesthetic improvement, and that in one Title it states that the City needs to look great and in the other one it states no obstructions whatsoever.

He stated that his job was as a project manager for cell tower installations. He has worked both in cities and rural areas and used directional boring, which would be done in residential areas if fiber was installed as noted by the City Engineer. As a result, the fence would not be an obstruction. He stated that they designed their fence to have LED lights on it and it lights up the sidewalk at night. He stated that the pictures that were included in the Agenda Packet showing other encroachments in the right of way were taken within a short distance to his house, not all over town. He explained that the reason that the Ordinance is in effect is that before roads were paved, there was gravel, and it was hard for push carts to get around on the gravel and there needed to be room for pedestrians. He stated that the property right next to him is also out of compliance. He also stated that if his appeal is not granted, then all of the rock and gravel at the next door neighbor's house will have to be moved as well. If it is a good Ordinance then it should be enforced across the entire City.

### **BOARD QUESTIONS**

Ms. Smith asked City staff what happened with the Encroachment application and wanted to know if the two feet was too much to give on the matter. Would the City have allowed the application if the homeowners agreed to the two feet?

Mr. Patton stated that the fence was already erected when he did his evaluation at the property.

Ms. Smith wanted to know if that was a compromise that the homeowner would have been willing to make, if the permit would had been granted.

Mr. Mizelle responded that they might have been able to redesign their plan.

Ms. Northerner asked Mr. Mizelle if he was aware of the Ordinance before he put the fence up. Mr. Mizelle responded that he was not aware of it. He stated that the City should get together with the title companies in Great Falls and put together a closing package that explains that there is Title 12 and Title 17, so that residents would know that they exist.

Ms. Northerner also asked if he checked with the City before putting the lights on top of the fence and Mr. Mizelle responded that the lights went up at the same time as the fence.

Ms. Smith asked if there was a lot of night time foot traffic between the lots.

Mr. Mizelle responded that there have been a few instances when people will cut through the vacant lot and straight across their front yard.

Mr. Stuver asked if the Appeal would be isolated to the subject property and not change the Ordinance.

Mr. Patton responded that the purpose of the Board is to review the City's interpretation and determination of applying the code. Mr. Micuda stated that it is a property specific decision based on the circumstances and the test is whether staff appropriately applied the code as written.

### **PROPONENTS**

Joyce Stafford, 1022 Valley View Drive, stated that the reason that they bought their house was because the yards looked nice and it looked like a nice neighborhood. She appreciates having neighbors that have pride in their property and keep it up. She stated that she walks her dog down the street daily and has not had any safety issues in regards to the fence.

Jerome Stafford, 1022 Valley View Drive, stated that there are a lot of City Ordinances on the books that aren't being followed or pursued, and understands the lack of personnel to police them. However, there are a lot of Ordinances being broken, such as RV's being parked on the streets, but there are hazards in life that you cannot protect every soul from. He does not see how a fence bordering a sidewalk would be a safety issue. He thinks the fence looks good and improves his property value.

### **PETITIONERS RESPONSE**

Mr. Mizelle stated that because of COVID-19, it was hard to get a chance to talk to people to sign the petition that he handed the Board. He stated that Title 17 does call on the City to look for ways to promote and improve health and safety and a fence improves health and safety because it does prevent falling and accidents.

### **BOARD DISCUSSION AND ACTION**

**MOTION:** That the Board of Appeals, based on the Findings for the Basis of Decision and the matters presented today affirm the Interim City Engineer's decision to deny the application for the Encroachment Permit.

**MADE BY:** Mr. Stuver  
**SECOND BY:** Ms. Northerner

**VOTE:** All in favor, the motion passed 4-0 [Appeal Denied]

Ms. Northerner stated that the Board was not there to change the law. She stated that it is not reasonable to ask the City to permit the fence, just because other citizens do it. If there is an issue with the Ordinance, then that is what needs to be addressed. The Board's job is to determine if the City made the right call on denying the application.

Ms. Smith agreed with Ms. Northerner. She stated that she drove by the property and thought that it was a beautiful fence but just because other people are doing it, does not mean that it is

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right. She stated that she appreciated what the Mizelles' did with their property and hopes that they will continue to do a good job with their property and hopes that their neighbors will follow the same example.

Ms. Northerner stated that the Mizelles' did make a very good point in regards to enforcement and that it is an issue.

Mr. McMillen stated that the fence does look very pleasing. He is concerned about kids riding their bikes, not paying attention, and getting their handlebars caught in the fence and crashing.

## **BOARD ACTIONS NOT REQUIRING PUBLIC HEARING**

### **Recommendation of Board Application received from Antoinette Collins**

Mr. McMillen asked the Board members if they all had a chance to review the Board application from Antoinette Collins. They all responded yes.

MOTION: To accept the application from Antoinette Collins as a new Board member of the Board of Adjustments/Appeals

MADE BY: Ms. Smith  
 SECOND BY: Mr. Stuver

VOTE: All in favor, the motion passed 4-0

### **Reappointment for term on Board – Joe McMillen and Aspen Northerner**

MOTION: To reappoint Joe McMillen and Aspen Northerner for another term on the Board of Adjustment/Appeals

MADE BY: Ms. Smith  
 SECOND BY: Mr. Stuver

VOTE: All in favor, the motion passed 4-0

Ms. Smith thanked Mr. Stuver for his service to Board.

## **COMMUNICATIONS**

Mr. Raymond also thanked Mr. Stuver for his service on the Board and thanked Ms. Northerner and Mr. McMillen for continuing their service on the Board.

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Mr. Raymond also stated that there is additional means for the public to participate via phone, so the Board should make sure that when they are asking for public comment that they check with staff to find out if anyone is on the phone during public comment participation.

### **PUBLIC COMMENT**

Mr. Mizelle asked why if the Board had a choice to stand with the City, stand with the homeowner, or fall within the guidelines of the Ordinance, because the Ordinance does allow up to two feet with the City Engineer's approval, then that would be a modification option., Why did the City staff tell the Board that they do not have the ability to modify?

Mr. Zadick responded that he did not direct the Board how to exercise their discretion. The Board has the discretion to determine whether it wants to affirm, modify, or reverse the decision. The motion was made to affirm, and that was the Board's discretion. Once the motion was seconded and there was public comment, it needed to be voted upon.

Mr. Mizelle responded that the Board was directed by the City that they could not modify the decision.

Mr. Zadick responded that the Board was made aware of their choices and choice to affirm. Public Comment was not the proper time to discuss the matter.

Mr. Micuda responded that the statute on conducting appeals, which is also in the local code, calls out for those three options, so those three options were listed because that is what the code says is required in an Appeal hearing. He stated that sometimes an Administrative Appeal comes forward, because there is a tremendous gray area in the code or there is a complete misapplication of the code. This is probably why the Board has an option to modify. However, generally speaking, it is a yes or no action based on the code at the time and how it was applied. Boards are typically cautioned not to get involved in remedy situations, but simply take the information and make a decision. If there is a remedy, it is typically done at the administrative level rather than at the Board of Appeal level.

Mr. Hindoien stated that he concurred with Mr. Micuda and that what he stated was a standard of review for a judicial appeal. There can be circumstances where an appeal would be presented to the Board and the Board could reach a conclusion that staff had misapplied or erroneously read the code., The Board could then make a conclusion that the decision that was reached by City staff could be modified without being reversed wholesale, but the predicate finding the Board needs to make is whether or not the code was followed or misapplied.

Joyce Stafford, 1022 Valley View Drive, asked who is responsible for maintaining sidewalks within the city, as there have been several that she has tripped over, especially when there are a lot of leaves that have fallen.

Mr. Patton responded that per City Code, the property owner adjacent to the sidewalk is responsible for its care and maintenance. If there is a complaint that is received on tripping hazards, the staff will look into it and if it is valid than the homeowner will need to fix the sidewalk.

### **ADJOURNMENT**



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There being no further business, Chair McMillen adjourned the meeting at 3:59 p.m.